



# Understanding the Private Express Statutes

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Publication 542

June 1998



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June 1998  
Transmittal Letter

- A. Explanation.** This publication provides the public with in-depth information about the Private Express Statutes in a "customer-friendly" manner.
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- D. Effective Date.** This handbook is effective June 1998.

A handwritten signature in cursive script that reads "Sherry Suggs".

Sherry L. Suggs  
Manager  
Chicago Rates and Classification Service Center

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# 1

## Introduction

### 11 What Are the Private Express Statutes?

The Private Express Statutes (PES) are a group of federal civil and criminal laws that, for the most part, make it unlawful for any entity other than the U.S. Postal Service to send or carry letters over post routes for compensation unless appropriate postage is paid in an amount equaling what would have been paid had the letters been sent through the Postal Service.

### 12 Background

The PES, originally enacted by Congress in 1792 to restrict the private carriage of letters, are based on the provisions in the U.S. Constitution that empower Congress “to establish Post Offices and Post Roads.” Congress enacted these laws to provide for an economically sound postal system that could afford to deliver letters between any two locations, however remote.

The Postal Service is authorized to adopt suspensions to the PES for specific circumstances in which the public interest might be best served by a private carrier. Notably in 1979, the Postal Service issued suspensions to enforcement of the general provisions of the PES for private carriage of “extremely urgent” letters. The issuance of this suspension opened more of the expedited mail market (letter mail) to Postal Service competitors. To ensure that the suspension is not misused to avoid paying postage for ordinary letters, the suspension sets up two “tests” of urgency. Those tests are discussed in chapter 4.

## 13 Purpose of PES

The PES support the basic mission of the Postal Service:

- To bind the nation together through the correspondence of the people.
- To provide services in all communities.
- To establish uniform postage rates.
- To ensure the safety of the mails.

Without the protection of the PES, mail volume from low-cost, high-profit areas would be targeted for carriage by Postal Service competitors, leaving the Postal Service the more expensive and difficult-to-serve areas. This would result in higher postage rates or the necessity for tax subsidies to cover the cost of universal delivery across the country. The PES protect the Postal Service's revenue base.

## 14 Implementing Laws and Regulations

The laws collectively known as the Private Express Statutes are codified in title 18, U.S. Code, 1693 through 1699, and title 39, U.S. Code, 601 through 606. The regulations implementing the statutes are in title 39, Code of Federal Regulations, parts 310 and 320.

## 15 Purpose of This Publication

This publication is intended as a user-friendly guide to the PES. It provides basic information about the statutes with common examples. In addition, it provides procedures for the establishment and maintenance of postage payment agreements when a mailer chooses to transport letters outside the mails and those letters do not qualify for any exception or suspension to the PES.

This publication is not the sole source of information about the PES. It does not supersede any regulation found in the Code of Federal Regulations (CFR). The CFR references for the topics under discussion are listed when applicable. A copy of the CFR provisions can be obtained from the Chicago Rates and Classification Service Center. (See subchapter 62 for contact information.)

The remainder of this publication is organized as follows:

- Chapter 2 defines and illustrates terms frequently used in administering the PES.
- Chapter 3 lists the exceptions to the PES and provides examples.
- Chapter 4 lists the suspensions of the PES and provides examples.
- Chapter 5 illustrates how letters can be privately carried in conjunction with a postage payment agreement.
- Chapter 6 provides sources of additional information.

## **16 Compliance With Statutes**

### **161 Mailer Responsibilities**

Although the Postal Service seeks to inform its customers of the requirements of the PES, the mailer is ultimately responsible for complying with the statutes and regulations and should make every effort to keep abreast of current regulations pertaining to private carriage of their letters.

### **162 Private Carrier Responsibilities**

Private carriers are cautioned to ensure that their carriage of matter is lawful within the definitions, exceptions, suspensions, and conditions contained in the PES. Carriers must take reasonable measures to inform their customers of the contents of these regulations so that only proper matter is tendered to them for carriage. Carriers should desist from carrying any matter when the form of shipment, identity of sender or recipient, or any other information reasonably accessible to them indicates that matter tendered to them for carriage is not proper under these regulations. For additional information, see 39 CFR 310.4 and 310.5.

## 2 Definitions

### 21 Letter (39 CFR 310.1)

A *letter* is a message directed to a specific person or address and recorded in or on a tangible object. Tangible objects used for letters include but are not limited to paper, recording disks, and magnetic tapes. Tangible objects used for letters do not include the following:

- a. Objects whose material or shape and design make them valuable or useful for purposes other than as media for long-distance communications, unless the objects are actually used as media for personal and business correspondence.
- b. Outsized, rigid objects not capable of enclosure in envelopes, sacks, boxes, or other containers commonly used to transmit letters or packets of letters. Generally, all First-Class Mail and all Standard Mail (A) matter, other than merchandise or other goods, delivered to a specific person or place in accordance with a selective delivery plan would be considered a letter.

### 22 Message (39 CFR 310.1(a)(2) through (6))

A *message* is any information or intelligence that can be recorded and directed to a specific person or address when it, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan.



## 23 Material Not Considered Letters (39 CFR 310.1(a)(7))

Within the meaning of PES, the following forms of communication are *not* considered letters:

- Telegrams.
- Financial instruments such as checks, drafts, promissory notes, bonds, stock certificates, securities, title policies, and insurance policies, **when shipped to, from, or between financial institutions**. For checks and drafts, *financial institutions* means banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities. For other instruments, *financial institutions* means institutions performing functions involving the bulk generation, clearance, and transfer of such instruments.
- Abstracts of title, mortgages, and other liens, deeds, leases, releases, and articles of incorporation.
- Papers filed in lawsuits or formal quasi-judicial proceedings, and orders of courts and quasi-judicial bodies.
- Newspapers and periodicals.
- Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories.
- Matter sent from a printer, stationer, or similar source to a person ordering such matter for use as his or her letters.
- Letters sent to a records storage center exclusively for storage, sent exclusively for destruction, retrieved from a records storage center, and sent as part of a household or business relocation.
- Tags, labels, stickers, signs, or posters whose type-size, layout, or physical characteristics indicate that they are primarily intended to be attached to other objects for reading.
- Photographic material sent by a person to a processor, and processed photographic material being returned from the processor to the person sending the material for processing.

- Copy sent from a person to an independent or company-owned printer or compositor, or between printers and compositors, and proofs or printed matter returned from the printer or compositor to the office of the person who initially sent the copy.
- Sound recordings, films, and packets of identical printed letters containing messages that are to be totally or almost totally disseminated to the public.
- Computer programs recorded on media suitable for direct input. For the conditions under which the PES are suspended for data processing materials, see subchapter 41.

## **24 Post Routes (39 CFR 310.1(d))**

*Post routes* are routes on which mail is carried by the Postal Service. They include post roads as defined in title 39, U.S. Code, 5003, as follows:

- The waters of the United States, during the time the mail is carried thereon.
- Railroads or parts of railroads and air routes in operation.
- Canals, during the time the mail is carried thereon.
- Public roads, highways, and toll roads, during the time the mail is carried thereon.
- Letter-carrier routes established for the collection and delivery of mail.

## **25 Private Carriage (39 CFR 310.1(e))**

The terms *private carriage*, *private carrier*, and terms of similar import used in connection with the PES mean carriage by any entity other than the Postal Service, regardless of any meaning ascribed to similar terms under other bodies of law or regulation.

## **26 Extremely Urgent Letter (39 CFR 320.6)**

An *extremely urgent letter* is one that may be sent by a private carrier without paying postage if *either* a “cost test” or a “loss-of-value test” criterion is met. For specific criteria, see subchapter 44.

# 3

## Exceptions to the PES

### 31 Cargo (39 CFR 310.3(a))

The sending or carrying of letters is permissible if they accompany and relate in all substantial respects to some part of the cargo or the ordering, shipping, or delivering of the cargo.

#### Examples

- Marcy's novelty store includes invoices or instructions for the use of its products in privately carried parcels. Invoices and instructions are normally considered letters, but when they relate in all substantial aspects to some part of the cargo, they meet this exception.
- Subscription notices are frequently delivered with the Daily Herald newspaper. The private carriage of subscription notices qualifies under this exception.
- A credit policy brochure of Scott's Security Company is included with privately carried merchandise. Because the brochure is unrelated to the cargo it accompanies, the criterion for this exception is not met.

### 32 Letters of the Carrier (39 CFR 310.3(b))

The sending or carrying of letters is permissible if they are sent by or addressed to the individual carrying them. If the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer or employee of such person and the letters must relate to the current business of such person.

The fact that the individual actually carrying the letters may be, for certain purposes, an officer or employee of the person sending the

letters or to whom the letters are addressed does not necessarily mean that he or she is an officer or employee for purposes of this exception. The following factors bear on qualifications for the exception:

- a. The carrying employee is employed for a substantial time, if not full-time (letters must not be privately carried by casual employees).
- b. The carrying employee is a regular salaried employee and shares in all privileges enjoyed by other regular employees (including employees not engaged primarily by the letter carrying function), including but not limited to salary, annual vacation time, absence allowed for illness, health benefits, worker's compensation insurance, and retirement benefits.
- c. The carrying employee carries no matter for other senders.

Separately incorporated carriers are distinct entities for purposes of this exception, regardless of any subsidiary, ownership, or leasing arrangement. However, when two concerns jointly operate an enterprise with joint employees and share directly in its revenues and expenses, either of the concerns may carry the letters of the joint enterprise.

### **Examples**

- Robin Wilson may carry personal bills and remittances to her creditors and qualify under this exception. However, if Robin also carries the bills and remittances of others, the criterion for this exception is not met.
- Pine Ridge Construction Company hires an individual exclusively for the carriage of its letters. This employee is paid at a lesser rate and does not share in all other privileges of regular salaried employees. Because the employee does not meet the criteria to be considered an officer or employee, the criterion for this exception is not met.

### **33 Private Hands Without Compensation (39 CFR 310.3(c))**

The sending or carrying of letters without compensation is permitted. Compensation generally consists of a monetary payment for services rendered. However, compensation may also consist of nonmonetary valuable consideration and of goodwill. Thus, for example, when a business relationship exists or is sought between the carrier and its user, carriage by the carrier of the user's letter will ordinarily not fall under this exception; or when a person is engaged in the transportation of goods or persons for hire, his or her carrying of letters "free of charge" for customers whom he or she charges for the carriage of goods or persons does not fall under this exception.

#### **Examples**

- Laura Bowley plans to travel to Cottonwood, Arizona. A friend asks Mrs. Bowley to carry a letter to another friend who resides there without payment of any compensation. Such private carriage is permissible under this exception.
- Mickey's Moving regularly transports equipment from the headquarters of a department store to its branch stores. The department store also requests Mickey's Moving to transport its letters along with its equipment. Mickey's Moving agrees to do so without additional compensation because it incurs no additional expense for doing so and also builds customer satisfaction in the process. Because a business relationship exists between Mickey's Moving and the department store, the criterion for this exception is not met.

### **34 Special Messenger (39 CFR 310.3(d))**

A special messenger may be employed to transmit letters for a particular occasion only if 25 or fewer letters are involved. The permission granted under this exception is restricted to the use of a messenger service on an infrequent, irregular basis by the sender or addressee of the letter.

A *special messenger* is a person who, at the request of either the sender or the addressee, picks up a letter from the sender's home or place of business and carries it to the addressee's home or place of business. A

messenger or carrier operating regularly between fixed points is not a special messenger.

### **Examples**

- Sandra's travel agency receives a request from Marcia Hess, a frequent traveler, to have some travel brochures sent to her. The travel agency normally uses the Postal Service for carriage but decides for this occasion to use a private carrier that offers a 2-day service. Because this private carriage is done on an infrequent, irregular basis, the criterion for this exception is met.
- Dave's grocery store accepts payment for utility bills that are then forwarded daily to the individual utilities. Because carriage is required on a frequent, regular basis, the criterion for this exception is not met.

## **35 Carriage Prior or Subsequent to Mailing (39 CFR 310.3(e))**

The private carriage of letters that enter the mailstream at some point between their origin and their destination is permissible. However, except as provided in this section, the carriage of letters from a place where they have been opened, read, separated, or otherwise utilized does not fall within this exception, even though such letters had previously been in the mailstream. Similarly, the carriage of letters to a place where they will be consolidated or otherwise utilized does not fall within this exception, even though such letters will subsequently enter the mailstream.

Examples of permitted activities include the pickup and carriage of letters that are delivered to post offices for mailing, the pickup and carriage of letters at post offices for delivery to addressees, and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

The private carriage of letters from branches of an organization to a location for preparation for mailing does not constitute a consolidation. The private carriage of letters from an organization's point of mail delivery to its branches in the locality does not constitute a separation.

## Examples

- Julie's presort bureau picks up letters from its customers each day and merges the letters into one mailing so that they will be eligible for discount rates. The letters are then transported to the local post office for acceptance. This practice meets the requirements of this exception because the letters will enter the mailstream between their origin and their destination.
- Joe's private messenger service picks up mail for several clients from the box section of the local post office and transports the mail to each client's place of business. This practice meets the requirements of this exception because the letters were entered into the mailstream between their origin and destination.
- Ted's private carrier service has been hired to run a bank's main mailroom. Part of the carrier's duties include picking up mail from the post office, sorting the mail to the different bank departments, and then delivering the mail to the departments. Some of the departments are located in off-site facilities, and post routes must be crossed to make delivery. None of the letters is opened to determine to which department it is addressed. This practice meets the requirements of this exception because the letters were entered into the mailstream between their origin and destination.



# 4

## Suspensions of the PES

Suspensions were adopted by the Postal Service for specific circumstances in which the public interest might be best served by a private carrier.

### 41 Data Processing Materials (39 CFR 320.2)

#### 411 Standards

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes for data processing materials defined in part 413 for the terms detailed in part 412, subject to the operating requirements in 39 CFR 320.3.

#### 412 Conveyed Material

The suspension referred to here is for data processing materials conveyed as follows:

- a. To a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day, and if data processing work on such materials commences within 36 hours of their receipt at the center, or
- b. Back from the data processing center to the address of the office originating the materials, if carriage is completed within 12 hours or by noon of the addressee's next business day, and if data processing work on such materials commenced within 36 hours of their receipt at the center.

For purposes of the time limitations for completion of delivery referred to in the preceding sentence, delivery of shipments between a domestic point and a foreign point shall be deemed to begin at the time materials of foreign origin arrive at the international gateway city or end at the time

materials of domestic origin leave the international gateway city. This suspension does not apply to carriages from or to originating offices that are neither part of the firm owning the data processing center nor data processing customers of the firm owning the data processing center.

#### 413 Definitions of Terms

The terms used here are defined as follows:

- a. The term *addressee's next business day* means the first calendar day, stated in the addressee's local time, on which the addressee conducts business, following the calendar day of dispatch, stated in the sender's local time.
- b. The term *data processing* means electro-mechanical or electronic processing and includes the recording of data by electro-mechanical or electronic means for further processing.
- c. *Data processing materials* means materials of all types that are sent exclusively for data processing and are ready for immediate data processing, but only if they are produced recurrently in the course of the normal business operations of the office originating them or receiving them back from the processing center. For purposes of this suspension, the performance of clerical work that is merely preparatory and incidental to the commencement of data processing is allowable under the requirement that the materials be sent exclusively for data processing and be ready for immediate data processing.

#### Example

- Jeff's Construction Company (JCC) forwards its weekly pay records, which are contained on floppy diskettes, to Chuck's Data Processing Center (CDPC) each Monday afternoon by private carrier. The records arrive by 9 a.m. the following day.

CDPC processes the pay records and generates paychecks from the data by 5 p.m. each Wednesday and forwards the paychecks back to JCC by private carrier for arrival by 10 a.m. Thursday. On Friday morning, the paychecks are distributed to JCC employees.

This practice meets this suspension because the data processing material is conveyed to CDPC by noon of the next business day, the data is processed within 36 hours of their receipt, and the

output from the data is carried back to JCC by noon of the addressee's next business day. However, if the paychecks were privately carried back to the home addresses of the JCC employees, the material would not qualify for this suspension.

## **42 Letters of College and University Organizations (39 CFR 320.4)**

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes to permit colleges and universities to carry in their internal mail systems the letters of their bona fide student or faculty organizations to campus destinations. This suspension does not cover the letters of faculty members, students, or organizations other than bona fide student or faculty organizations of the carrying college or university. Colleges and universities choosing to provide their student or faculty organizations access to their internal mail systems are responsible for ensuring that only letters of bona fide student or faculty organizations addressed to campus destinations are carried. For purposes of this suspension, *internal mail systems* are those that carry letters on, between, and among the various campuses of a single college or university and that operate in accordance with Letters of the Carrier Exception (see subchapter 32 (39 CFR 310.3(b))).

### **Examples**

- The University of Indiana has campus locations in Bloomington, Muncie, Fort Wayne, and Terre Haute. The student chess club at the Terre Haute campus sends, by internal mail, information about its chess tournaments and the accomplishments of its members to the chess clubs at the other campus locations. This practice qualifies for this suspension if the chess clubs are bona fide student organizations.
- The University of Texas has campus locations in Dallas, Houston, Austin, and Brownsville. The faculty diversification organization at the Brownsville campus has the minutes of its meetings and the text of its speeches privately carried to organization members at each campus location. This practice does not qualify for this suspension because the letters are not carried in the internal mail system.

### **43 Certain International Ocean Carrier-related Documents (39 CFR 320.5)**

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes for documents sent by a shipper or an ocean carrier from a foreign origin to a U.S. ocean-carrier port city destination or from a U.S. ocean-carrier port origin to a foreign destination that is excepted under 39 CFR 310.3(a) if the documents accompanied the cargo. This suspension covers only shipments to or from ports where the cargo to which the documents relate is actually loaded on, or unloaded from, an ocean vessel. For purposes of this suspension, *foreign origins* or *foreign destinations* means origins or destinations outside the contiguous 48 states.

### **44 Extremely Urgent Letters (39 CFR 320.6)**

#### **441 Standards**

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes for extremely urgent letters if the conditions are met in either parts 442 or 443 and part 444.

#### **442 Time Limits for Delivery**

For letters dispatched within 50 miles of the intended destination, delivery of those dispatched by noon must be completed within 6 hours or by the close of the addressee's normal business hours that day, whichever is later, and delivery of those dispatched after noon and before midnight must be completed by 10 a.m. of the addressee's next business day. For other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day. The suspension is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits. For any part of a shipment of letters to qualify under this section, each of the letters must be extremely urgent.

Letters sent from the 48 contiguous states of the United States to other jurisdictions of the United States or to other nations are deemed *delivered* when they are in the custody of the international or overseas

carrier at its last scheduled point of departure from the 48 contiguous states. Letters sent from other jurisdictions of the United States or from other nations into the 48 contiguous states are deemed *dispatched* when they are in the custody of the domestic carrier, having been passed by U.S. Customs, if applicable, at the point of arrival of the letters in the 48 contiguous states.

Except as provided in this paragraph, the times and time limits specified in this section are not applicable to any location outside the 48 contiguous states. The times and time limits specified in this section are applicable to letters dispatched and delivered wholly within Alaska, Hawaii, Puerto Rico, or a territory or possession of the United States. The regulations provided in this section relating to the delivery and dispatch of letters are applicable by analogy to letters shipped between these jurisdictions and other nations.

#### **443 Postage Value**

It will be conclusively presumed that a letter is extremely urgent and is covered by the suspension if the amount paid for private carriage of the letter is at least \$3 or twice the applicable U.S. postage for First-Class Mail (including Priority Mail), whichever is greater. If a single shipment consists of numerous letters that are picked up together at a single origin and delivered together to a single destination, the applicable U.S. postage may be computed as though the shipment constituted one letter having the weight of the single shipment. If the letters are not actually charged on a letter-by-letter or shipment-by-shipment basis, the amount paid may be computed on the basis of the carrier's actual charge divided by a bona fide estimate of the average number of letters or shipments during the period covered by the carrier's actual charge.

#### **444 Required Markings**

The sender must prominently mark the outside covers or containers of letters carried under this suspension with the words "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations" or with a similar legend identifying the letters as carried pursuant to this suspension. In addition, each outside container or cover must show both the name and address of the carrier and the name and address of the addressee. Carrier records must be sufficient to show that the delivery of the letters was completed within the applicable time limitations, if carried under the

authority of part 442, and must be made available for inspection at the request of the Postal Service. The required records may be either in the form of notations on the containers or covers of any letters asserted to be carried under this suspension or in the form of records kept by employees of the actual times they pick up and deliver such materials.

#### 445 **Examples**

- Each night the headquarters of a city police department compiles a list of the license plate numbers and descriptions of automobiles reported stolen within the metropolitan area during the previous 24 hours. This list is delivered by 7 a.m. the following day to each of the local precinct offices in the city. By 9 a.m. that day, the list is circulated for use by law enforcement units operating from each office. Effective police recovery of stolen vehicles depends on having this information handed out at least daily in written form to all units. The private carriage of these lists would qualify under the loss-of-value test set out in part 442.
- From time to time, the same police department headquarters distributes memoranda responding to inquiries from the local precinct offices and advising the local precinct officers on departmental policy and vacation schedules. No substantial police business depends on whether these memoranda arrive by midnight or by 10 a.m. the next business day, or whether their transmission takes a day or more to complete. The private carriage of these memoranda would not qualify under the loss-of-value test set out in part 442.
- Each day a health maintenance organization (HMO) operating its own hospital, clinics, and medical laboratory sends test samples and specimens from the HMO's hospital and clinics to its medical laboratory in a different location for immediate analysis. In return, the HMO laboratory sends to the HMO's hospital and clinics the laboratory reports for these samples and specimens on the day that the reports are completed. The reports are then promptly utilized by the hospital and clinics as part of regular diagnostic procedures. The private carriage of these reports would qualify under the loss-of-value test set out in part 442.

- The same HMO's hospital and clinics send requisitions and invoices to the HMO's central office as the need arises for the ordering of any payment for goods and services, which are handled centrally. Every other Friday the central office sends to the hospital and clinics reports and memoranda on expenditures for personnel, supplies, utilities, and other goods and services. No substantial hospital business depends on whether these materials arrive the same day or by 10 a.m. the next business day, or whether their transmission takes a day or more to complete. The private carriage of these materials does not qualify under the loss-of-value test set out in part 442.
- On Sunday, Tuesday, and Thursday evenings, the central office of a regional grocery store chain sends out to its various stores in the area inventory bulletins prepared during the previous 24 hours showing the current availability and prices of meat, produce, dairy products, bread stuffs, frozen food, and similar items. Early the following afternoon, each store must return these inventory bulletins to the central office with a notation of the store's orders to ensure that the central office can ship sufficient supplies of such items for sale by the store on its next business day. The private carriage of these bulletins qualifies under the loss-of-value test set out in part 442.
- On Sunday, Tuesday, and Thursday evenings, the central office of a different regional grocery store chain sends out to its various stores in the area inventory bulletins prepared during the previous 24 hours showing the current availability and prices of meat, produce, dairy products, bread stuffs, frozen foods, and similar items. Early in the afternoon of the second day following receipt of the bulletins, each store returns the bulletins to the central office so that supplies of such items may be shipped to the store 4 days later. No substantial store business depends on whether these bulletins arrive within 12 hours or by noon of the next business day, or whether their transmission takes a day or more to complete. The private carriage of these materials does not qualify under the loss-of-value test set out in part 442.

- Each business day the headquarters office of a large bank prepares and sends to its branch offices lists showing current foreign exchange rates and similar information that must be updated and distributed to the branches on a daily basis in order for the bank to avoid the risk of serious financial loss. Within 3 hours of their receipt by each branch office, these lists are circulated and utilized by officials of the branch office in conducting regular banking procedures involving the use of such lists. The private carriage of these lists would qualify under the loss-of-value test set out in part 442.
- Each business day the field office of an insurance company sends the insurance applications it has taken in that day to the company's central office. The applications are bound (i.e., constitute evidence of insurance) for 30 days, but may be canceled by the company. Few if any policies have been canceled by the company within 48 hours of their receipt at the central office, though the company normally begins processing the applications soon after their receipt. No substantial insurance business depends on whether these bound applications arrive within 12 hours or by noon of the next business day, or whether their transmission takes a day or more to complete. The private carriage of these materials does not qualify under the loss-of-value test set out in part 442.
- An organization of real estate brokers in a community issues periodic bulletins containing information about properties that have been listed for sale by the constituent brokers. Each broker is entitled to show the properties to prospective buyers. To provide each broker with substantially equal opportunity to secure a buyer, it is necessary that the bulletins be delivered on the same day and within the shortest time span within that day. The bulletins constitute the basic source of information for the brokers, and delivery in the foregoing manner is a key element in the functioning of the brokers. The private carriage of the bulletins qualifies under the loss-of-value test set out in part 442.



- The same organization distributes memoranda regarding speakers at real estate seminars, sales figures for a given period, and other information of significance and interest to real estate brokers but that do not affect their competitive positions. A failure to make simultaneous or near simultaneous delivery to the brokers or to make delivery within a specified period of time has no material bearing on the day-to-day operations of the brokers. The private carriage of these materials does not qualify under the loss-of-value test set out in part 442.

## **45 Advertisements With Parcels or Periodicals (39 CFR 320.7)**

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes for any advertisement enclosed with merchandise in parcels or accompanying periodicals under the following circumstances:

- a. The advertisement must not be marked with the names or addresses of the intended recipients.
- b. The advertisement must be incidental to the shipment of the accompanying merchandise or the periodical as follows:
  - (1) An advertisement is incidental to the shipment of the accompanying merchandise or the periodical when the merchandise or the periodical has been ordered by or would otherwise be sent to the recipient even without the accompanying advertisement.
  - (2) Notwithstanding 39 CFR 320.7(a)(2)(i), an advertisement is not incidental to the merchandise when the pertinent circumstances, such as the nominal value of the merchandise, its shipment on an unsolicited basis, or its status as a sample reasonably indicate that the shipper's primary purpose is the conveyance of the advertisement itself and that the merchandise is merely an adjunct to the advertisement.

An item is an advertisement if its primary purpose is to cause or include the purchase of goods or services from the shipper or others.

### **Examples**

- Bean's End includes catalogs of all its merchandise lines with the privately carried parcels that contain merchandise ordered by its customers. The catalogs do not relate in all substantial respects to some part of the cargo or the ordering, shipping, or delivering of the cargo, so they do not qualify for the cargo exception listed in subchapter 31. However, they do qualify for this suspension because they are incidental to merchandise ordered by the customer.
- The Fox Valley Computer Company sends out computers by a private carrier along with advertisements for computer software and printers. Such advertisements meet this suspension because they are incidental to the shipment and the shipper hopes to generate more business from its customers.

## **46 International Remailing (39 CFR 320.8)**

### **461 Standards**

The operation of 39 U.S.C. 601(a)(1) through (6) and 39 CFR 310.2(b)(1) through (6) is suspended on all post routes to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

### **Examples**

- The letters to overseas customers of commercial Firm A in Chicago are carried by Carrier B to New York, where they are delivered to Carrier C for carriage to Europe. Carrier C holds the letters in its distribution center overnight, sorts them by country of destination, and merges them with letters of other firms addressed to those countries before starting the carriage to Europe in the morning. The carriage of Firm A's letters is not interrupted. The suspension for international remailing applies to the carriage by Carrier B and by Carrier C.

- The bills addressed to foreign customers of the Chicago branch office of commercial Firm D are carried by Carrier E to New York, where they are delivered to the accounting department of Firm D's home office. The accounting department uses the information in the bills to prepare its reports of accounts receivable. The bills are then returned to Carrier E, which carries them directly to Europe, where they are entered into the mails of foreign countries. The carriage of the bills from Chicago to Europe is interrupted in New York by the delivery to Firm D's home office. The suspension for international remailing does not apply to the carriage from Chicago to New York. However, it does apply to the subsequent carriage from New York to Europe.

#### **462 Carriage Out of Mails to U.S. Residents**

This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

##### **Example**

- A number of promotional letters originated by Firm F in Los Angeles are carried by Carrier G to Europe for deposit in the mails of a foreign country. Some of the letters are addressed to persons in Europe, some to persons in the United States. The suspension for international remailing does not apply to the letters addressed to persons in the United States.

#### **463 Revocation of Suspension**

Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension concerning such shipper or carrier for a period of 1 year in a proceeding instituted by the General Counsel in accordance with 39 CFR 959. The failure of a shipper or carrier to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service for determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this section and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension concerning a shipper or carrier shall in no way limit other actions concerning such shipper or carrier to enforce the

PES by administrative proceedings for collection of postage (see 39 CFR 310.5) or by civil or criminal proceedings.

# 5

## Implementing Lawful Private Carriage of Letters With Postage Payment

### 51 Reasons for Private Carriage of Letters

In some instances, mailers may wish to have their letters privately carried even though they must reimburse the Postal Service for the amount of postage that would have been charged on the letters if they had been sent through the Postal Service. Some reasons for private carriage include the following:

- a. A firm may desire expedited delivery of both extremely urgent letters and letters that are not extremely urgent to a common destination and does not wish to segregate the letters that are not extremely urgent for delivery by the Postal Service.
- b. A firm may desire multiple daily deliveries, which are not provided by the Postal Service.
- c. A firm may desire an extremely high level of security for its letters.
- d. A firm delivering its letters in accordance with the letters of the carrier exception may find that changing over to a private carrier can lower its overall carriage costs even with reimbursement to the Postal Service for postage.

### 52 Private Carriage in Limited Instances (39 CFR 310.2(b)(1))

Private carriage of a letter is lawful if the following requirements are met:

- a. The letter is enclosed in an envelope or other suitable container.
- b. The amount of postage that would have been charged on the letter if it had been sent through the Postal Service is paid with

- U.S. postage or postage meter stamps on the cover or by other methods approved by the Postal Service.
- c. The name and address of the person for whom the letter is intended appear on the cover.
  - d. The cover is so sealed that the letter cannot be taken from it without defacing the cover.
  - e. All stamps on the cover are canceled in ink by the sender.
  - f. The date of the letter, or of its transmission or receipt by the carrier, is endorsed on the cover in ink by the sender or carrier, as appropriate.

### **53 Private Carriage in Volume Instances (39 CFR 310.2(b)(2))**

Private carriage of a letter is lawful if the activity is in accordance with the terms of a written agreement between the shipper or the carrier of the letter and the Postal Service. Such an agreement must:

- a. Adequately ensure payment of an amount equal to the postage to which the Postal Service would have been entitled had the letter been carried in the mail.
- b. Remain in effect for a specified period, subject to renewals.
- c. Provide for periodic review, audit, and inspection.

Possible alternative arrangements may include but are not limited to the following:

- a. Payment of a fixed sum at specified intervals, on the basis of the shipper's projected shipment of letters for a given period as verified by the Postal Service.
- b. Use of a computer record to determine the volume of letters shipped during an interval and the applicable postage to be remitted to the Postal Service.

## **54 Postage Required for Lawful Private Carriage of Letters**

Determining the amount of postage payment required for private carriage can be done in different ways based on different circumstances. In some instances, the Postal Service may review the private carrier's records to determine the required amount. In other cases, postage samplings will have to be performed until the Postal Service is satisfied that it has determined an amount equal to that which the Postal Service would have been entitled to had the letters been carried in the mail. When letters are aggregated for delivery to a single addressee, the amount of postage required is based on the weight of the mailpiece, not on the weight of each letter enclosed in the mailpiece. Once an amount of postage is established, it must be periodically reviewed for accuracy and adjusted if necessary.

## **55 Postage Payment Methods**

Customers may pay postage in any manner that is verifiable, such as the following:

- a. Payment with meter strips affixed to a log book that indicates the dates and amounts of payment.
- b. Payment of a fixed sum by a specific date, such as the first of the month or the first of the year.

## **56 Postage Payment Agreements (39 CFR 310.2(b)(2)(i))**

Activity must be in accordance with a written agreement between the shipper or the carrier of the letters and the Postal Service for payment of postage when postage is not affixed to the individual mailpieces. Such an agreement is prepared by the Chicago Rates and Classification Service Center after the required postage amount is determined, a fixed payment schedule is determined, and time frames for periodic review are established. The agreement must be signed by the participating parties and approved by the manager of the Chicago Rates and Classification Service Center.

# 6

## Additional Information

### 61 Manager, Business Mail Entry (MBME)

The MBME is the district coordinator for administration of the PES. As coordinator, the MBME is the district's source of PES information for customers and postal employees.

### 62 Chicago Rates and Classification Service Center

National administrative responsibility of the PES is under the jurisdiction of the manager of the Chicago Rates and Classification Service Center. If information is needed on a specific application of the PES, call 630-978-4327/4312 or write to:

MANAGER  
CHICAGO RATES AND CLASSIFICATION SERVICE CENTER  
US POSTAL SERVICE  
3900 GABRIELLE LN RM 111  
FOX VALLEY IL 60597-9599